THE LAW AND HOW IT HELPS IN THE CONSERVATION OF MIGRATORY BIRDS FOR SUSTAINED USE

Wayne Spencer

CANADIAN WILDLIFE SERVICE

Western and Northern Region

4999 - 98 Avenue

EDMONTON, ALBERTA

T6B 2X3

January 1990

Early history

Healthy and vigorous migratory bird populations are a significant part of our Canadian wildlife heritage, and at the same time they represent an important economic resource to Canada. At the turn of the century, market hunting and the milinary trade decreased waterfowl. The extinction of the Passenger Pigeon, the Auk and Labrador Duck as well as the decline in migratory insectivorous birds initiated discussions on an agreement between Canada and the United States of America to protect all migratory birds (Foster, 1978). Migratory bird populations of interest to Canada are international in scope as they are shared by other countries in addition to the United States.

In 1914, as waterfowl, plumed migratory bird species and shorebirds continued to decline, the United States began to lobby in Canada to sign a treaty designed to protect migratory birds through regulating the kill and protecting the birds during the breeding season and at breeding sites. An international treaty was considered to be the supreme law of the land; no state or provincial court could attack it. Such a treaty would provide the protection necessary to safeguard the conservation of migratory birds between the two countries (Hewitt, 1921).

On August 16, 1916, "His Britannic Majesty" of Great Britain on behalf of Canada signed the Migratory Birds Convention with the United States of America. This Empire Treaty had four basic provisions:

1) That birds important to agriculture because of their insect-destroying habits shall not be shot at any time.

2) That open seasons on any species of migratory game birds shall not extend for a longer period than three and one-half months between September 1 and March 10.

3) That both countries shall restrict open seasons on migratory game birds to prevent their being taken during the breeding season.

4) That there shall be no shipment from one country to the other of birds which were taken contrary to law.

The fundamental purpose of the treaty is to authorize activities preserving species from extinction and unwarranted destruction. It defines the groups of birds affected by it, stipulates limitations on open seasons when migratory birds may be hunted, with a general prohibition between the 10th of March and the 1st of September and a maximum open season length in any one region of three and one-half months within the remaining six and one-half months. The treaty stipulates limitations on the taking and shipment of migratory birds and provides for the issuance of special permits for scientific and propagation purposes and for controlling birds causing damage to crops or other property (Lewis, 1951). The terms of the treaty are binding on both Canada and the United States, and can only be altered by a new treaty.

The federal responsibility for the management and protection of migratory birds in Canada stems from the Migratory Birds Convention Act. Enacted by parliament on August 29, 1917, the Act set forth the measures by which Canada fulfils her obligations under the treaty. The Act may be amended by parliament, but any amendment must be in uniformity with the terms of the treaty (Lewis, 1950).

The Act provides for the making of Regulations by Order-in-Council for the protection of migratory game, migratory insectivorous and migratory nongame birds that inhabit Canada during the whole or any part of the year. Regulations on open seasons for migratory game birds, bag and possession limits, the hours and methods of hunting migratory game birds, appliances, and the issuance and use of permits for scientific, propagation, taxidermy, eiderdown collection and others are included. The regulations also established annual closed seasons, varying according to locality and species. Insectivorous and migratory non-game birds received permanent protection. In some cases, the regulations have prolonged closed seasons such that various species receive virtually permanent protection. Wood ducks, Canvasbacks and Redheads have consistently received special attention while daily limits of Mallards, Black Ducks and Pintails have been reduced on several occasions (Bellrose, 1976).

The powers specified in the Act are used to develop and publicize the Migratory Bird Sanctuary Regulations. Prior to the passage of the Sanctuary Regulations, there had been a number of public and private wildlife sanctuaries, parks and game preserves within which a degree of protection was afforded. Creation of many of the sanctuaries for the protection of breeding or migrating populations of migratory birds was initiated by private citizens who voluntarily petitioned to have their property placed under the sanctuary restrictions (Clepper, 1966).

During the 1920s and early 1930s, season length was long and bag limits large. More and more people hunted. When waterfowl populations began to decline, the season length and bag limits were reduced. The

use of live decoys, recorded bird calls, shotguns larger than 10 gauge and capable of holding more then three shells, baiting and other methods of hunting waterfowl were banned.

As migratory bird populations continued to decline, especially during the drought of the mid and late 1930s and early 1940s, regulations continued to become more restrictive. Hunting seasons were shortened again and bag limits were further reduced. Strict guidelines were placed on the issuance of Scientific Permits and further prohibitions and regulations on the methods of hunting were introduced, such as the use of power boats and other vehicles, and possession of more than one shotgun while actively hunting migratory game birds. Aggregate daily limits from two respective provinces were introduced and the stipulation that hunters must retrieve crippled or wounded birds was made mandatory (Lewis, 1976).

The regulations are amended annually. Season dates and bag limits are established in relation to surveys concluded on the abundance of waterfowl and conditions during the nesting season. A shortened waterfowl season, reduction in the daily bag and possession limits as well as species restrictions have been implemented to offset waterfowl habitat losses, a poor nesting season and pressure from overhunting (Bellrose, 1976). Provinces where shooting on Sundays and daily shooting after 12:00 noon are prohibited (Saskatchewan and Manitoba) may have open seasons extended to compensate for those days and times on which no shooting takes place.

Summary of Regulatory Enforcement

The Migratory Birds Convention Act and Regulations have been administered by the Government of Canada since coming into force on

August 29, 1917 and July 3, 1918 respectively. The Dominion Parks Branch of the Department of the Interior and the Royal Canadian Mounted Police shared the enforcement responsibilities initially (Lewis, 1976). Chief Federal Migratory Bird Officers (one on each of the east and west coasts and Ontario-Quebec) represented the Parks Branch in enforcing the legislation. Each Chief Federal Officer had a small staff of Migratory Bird Officers as well as a number of Honourary Game Officers across Canada (beginning in 1919).

The RCM Police became Game Officers under the Act on October 14, 1932. Order-In-Council P.C. 2283 dated October 14, 1932 transferred all enforcement responsibility for migratory birds to the RCM Police. All other administrative activities remained with the Department of the Interior.

The transfer of the enforcement work to the RCM Police increased the administrative workload on the Wildlife Division of the Department of the Interior. All patrols, investigations and prosecutions under the Act and Regulations were reported by the RCM Police to this Division. The Chief Federal Migratory Bird Officers who were Biologists with secondary enforcement responsibilities served as liaison officers between RCM Police detachments and the Department of the Interior. Providing technical advice on the application of the law, expert witnesses and cooperation with provincial game authorities were included as part of their duties.

A fourth Chief Migratory Bird Officer was appointed for the three prairie provinces in 1934. This manpower level remained through 1950 when there were 33 Game Officers (20 full-time, 13 seasonal) employed by

the Dominion Wildlife Service, so named by Order-In-Council P.C. 37/4433, October 30, 1947, later to become the Canadian Wildlife Service by P.C. 3/330, January 20, 1950 (Lewis, 1976).

The Canadian Wildlife Service provides the national leadership in the protection and management of migratory birds through maintaining productivity of Canada's wildlife habitat and in the sustained utilization of species. Over 70% of Canadians take "some" active interest in migratory birds, whether they are hunters, naturalists, or other conservationists (Filion et al. 1983). Waterfowl also represents a significant resource to subsistence hunters in some parts of Canada. Conservation and protection of this resource is assured through a concerted, positive and coordinated effort by governments throughout North America.

Since 1966, the Canadian Wildlife Service has attempted to respond to the need for better coordination of law enforcement activities regarding migratory birds by recruiting a staff specially trained in this field. The RCM Police likewise responded by providing special training and responsibilities in migratory birds to selected officers. This special unit of the RCM Police remained in force until 1988 when it was disbanded.

The Canadian Wildlife Service employs Wildlife Enforcement Coordinators in its Migratory Birds enforcement section across Canada. Duties are similar to those of the original Chief Federal Migratory Bird Officers.

Migratory Birds are a national concern. One province's failure to regulate hunting of migratory game birds in concert with other provinces

could well lead to disintegration of the entire system of regulations and violation of the terms of the Treaty. Some federal, provincial and state agencies may at times restrict hunting opportunity and bag limits on more than one species to protect adequate breeding populations of a species in short supply. The Flyway System (a biological administrative system, the boundaries being a compromise between biological and administrative considerations in regards to waterfowl migration) allows differing regulations relating to individual waterfowl populations migrating through each flyway (Pacific, Central, Mississippi and Atlantic). Flock management within flyways allows more refinement in regulations for specific groups of birds (Bellrose, 1976).

The Canadian Federal Migratory Game Bird Hunting Permit was introduced in 1966 to provide a uniform, nationwide sampling opportunity of migratory game bird hunters and their kill. It is an important management tool and is dependent on complete and rapid turnaround of permit information.

In 1984, an annual Wildlife Habitat Conservation stamp became part of the Migratory Game Bird Hunting Permit, in an effort to combat declining waterfowl habitat in Canada. The stamp continues to be issued on behalf of Wildlife Habitat Canada, a private foundation established to promote wildlife habitat conservation. A similar "Duck Stamp" has been in use in the United States since 1935. Funds from the purchase of these stamps are redirected into the conservation of wetlands and of other habitat important to waterfowl and other wildlife.

Migratory birds come under the jurisdiction of a federal authority for the same reason as foreign commerce is administered by the Department

of Industry, Science and Technology. Provincial governments are responsible for natural resources within provincial borders except when resources are shared internationally or with other provinces. The provincial and territorial governments play a role in setting hunting regulations in cooperation with the federal government and enforcing the regulations under the Act. The province may set its own regulations as well, but these regulations cannot be less restrictive or more permissive than those set by the federal government.

The Treaty made Canada responsible for migratory bird protection while property rights were retained by the provinces. Under the Constitution Act of 1867, legislative powers were divided between parliament and the provincial legislatures. With respect to the Migratory Birds Convention Act, both federal and provincial heads of power may enact legislation dealing with the subject. Where there is a conflict between the provisions of the federal and provincial statutes and regulations, the federal provisions prevail under a legal doctrine known as "paramountcy". The absolute authority of the federal government over migratory birds is attributed to the fact the Migratory Birds Treaty is an Empire Treaty. Section 132 of the Constitution Act of 1867 gave parliament jurisdiction to enact legislation implementing a treaty. Consequently, the Migratory Birds Convention Act and Regulations are constitutionally valid even though they conflict with provincial statues and regulations. This provides a legal foundation for the federal authority in regulating open seasons for Migratory Game Birds (Lewis, 1976).

Other forms of legislation in Canada assist in a sustainable use of wildlife by Canadians. The Canada Wildlife Act (1973) does not give additional authority to the federal government to undertake certain activities not provided for under the Migratory Birds Convention Act. Federal measures for wildlife other than migratory birds are permitted on lands managed by Federal Crown but on other lands, federal conservation measures must be within the terms of an agreement with the provinces.

Indian and Inuit people may hunt migratory game birds without the Migratory Game Bird Hunting Permit but must abide by the seasons, bag and possession limits set out in the regulations. A protocol to amend the Migratory Birds Treaty contemplating a regulated spring hunt by native people for "nutritional and other essential needs" was signed by Canada and the United States in 1979. The protocol has yet to receive the force of law in either Canada or the United States.

The Future

One of the oldest approaches to wildlife management is the restriction of hunting by means of laws and regulations. Enforcement of these restrictions is one of the oldest approaches to wildlife management. Without it, no conservation program would accomplish its objective of restoring, developing, conserving and managing wildlife resources (Lewis, 1976).

A sound wildlife program contains four main features:

1) Adoption and enforcement of suitable legislation.

2) Public education and stimulation.

3) Habitat development and preservation.

4) Study (survey, research and monitoring) into ways to deal with problems of the present and future.

No feature ranks higher or lower than the other; all are essential and must be carried on simultaneously.

Public concern for migratory bird protection is widespread and has followed a parallel course in both countries. Conditions which decimated the wild bird populations are very similar in Canada and the United States. As more is known about the biology, habits and migratory characteristics of migratory birds, consequences of detrimental activities are better understood. This understanding leads to more effective and sound arguments for legislative action (Anonymous, 1989) and has been of inestimable value in working out processes for international bird protection (Anonymous, 1988).

The North American Waterfowl Management Plan is an example of international cooperation to conserve some migratory birds and their habitat. Other examples of cooperative action include the spring waterfowl breeding pair surveys, Trumpeter Swan banding and collaring, Whooping Crane recovery and migratory bird banding. Alterations of habitat by agriculture, urbanization and industrial activities has affected not only waterfowl, but many of Canada's rare, threatened or endangered species. Conservation of habitat, harvest management through regulations and enforcement, environmental pollution and disease prevention are factors addressed in this plan. The plan is not to change the fiscal or regulatory processes used in each country but to identify desirable accomplishments and recommendations in developing additional areas both

governmental and private aimed at protecting migratory birds (Anonymous, 1986).

The treaty between Canada and the United States to protect migratory birds could be considered the most important document in the history of wildlife conservation in North America. It established the principles of protection of migratory birds. Many of the laws passed are affected by the nature of bird migration. Regular spring and summer movements mean that the period of greatest concentration falls at different times of the year and in different latitudes. Laws that correspond with the dates of greatest abundance subjected the birds to continuous pressure over most of their migration route and during unbroken periods of long duration. Unless a coordinated scheme of protection between the two countries for all migratory birds is continually improved, many valuable species of migratory birds could go the route of those already extinct.

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